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Public Interest Law.

a. 20 Baker Street, Rosebank, South Africa, 2196

t. +2711 268 6881

f. +2786 614 5818

e. connect@powersingh.africa

w. powersingh.africa



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Date: 21 August 2020

Your ref: --

Our ref: PSIMM-201912

TO: Broadcasting Complaints Commission of South Africa

By email: bccsa@nabsa.org.za

To whom it may concern,

COMPLAINT SUBMITTED BY MEDIA MONITORING AFRICA

1. We act for Media Monitoring Africa (“MMA”).
2. Please find enclosed a complaint submitted to the Broadcasting Complaints Commission of South Africa (“BCCSA”), on behalf of MMA, regarding an interview with David Icke that was broadcast on eNCA and eTV on a show titled “So what now?”. To MMA’s knowledge, the details of the broadcast are as follows:
 - a. The interview was first broadcast on eNCA on Wednesday, 22 July 2020 at 20h30.
 - b. The interview was re-broadcast on eTV on Thursday, 23 July 2020 at 23h00.

c. The interview remains accessible on ENCA's website, and is accessible here:
<https://www.enca.com/shows/so-what-now-22-july-2020>.

3. Please feel free to contact us if we can provide any further information.

Yours faithfully,



POWER SINGH INC.

Per: Avani Singh | *Director*

E-mail: avani@powersingh.africa

**COMPLAINT TO THE BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA
SUBMITTED BY MEDIA MONITORING AFRICA**

INTRODUCTION

1. This complaint is submitted by Media Monitoring Africa (“MMA”) to the Broadcasting Complaints Commission of South Africa (“BCCSA”). The complaint relates to an interview with David Icke on a show titled “So what now?”, which was first broadcast on eNCA on Wednesday, 22 July 2020 at 20h30, and subsequently re-broadcast on eTV on Thursday, 23 July 2020 at 23h00. The broadcast also remains accessible on ENCA’s website, and is accessible here: <https://www.enca.com/shows/so-what-now-22-july-2020>.
2. MMA submits that the contents of the broadcast were unlawful, harmful, and in breach of the provisions of both the Subscription Broadcast Code of Conduct (applicable to eNCA) and the Free to Air Code of Conduct (applicable to eTV). In the current context, as South Africa and the world grapple with the devastating effects of the COVID-19 pandemic, broadcasts of this nature that patently seek to spread disinformation should be carefully scrutinised, as they do not serve the public interest or further any meaningful engagement on the subject. In particular, MMA submits that eNCA, as a news broadcaster, has a heightened responsibility to ensure the credibility and truthfulness of the content that it disseminates.
3. This submission is structured as follows: (i) first, an overview of MMA; (ii) second, the harmful nature of the broadcast; (iii) third, the specific grounds of complaint; and (iv) fourth, the appropriate sanction. This is dealt with in turn below.

OVERVIEW OF MEDIA MONITORING AFRICA

4. MMA is a not-for-profit organisation that has been monitoring the media since 1993. MMA’s objectives are to promote the development of a free, fair, ethical, and critical media culture in South Africa and the rest of the continent. The three key areas that MMA seeks to address through a human rights-based approach are media ethics, media quality and media freedom.
5. MMA has over 25 years of experience in media monitoring and direct engagement with media, civil society organisations, state institutions and citizens. MMA is the only independent organisation that analyses and engages with media according to this framework. In all of our projects, we seek to demonstrate leadership, creativity and progressive approaches to meet the changing needs of the media environment.

6. MMA also works directly on issues to combat the spread of disinformation. This includes overseeing the Real411 portal, which is an online platform through which members of the public can submit complaints of disinformation, hate speech, incitement to violence and the harassment of journalists. MMA has also conducted research, training workshops and public discussions on the need to strike an appropriate balance between the right to freedom of expression and measures to address disinformation.
7. For more information about MMA, please visit: www.mediamonitoringafrica.org.

HARMFUL NATURE OF THE BROADCAST

8. MMA submits that the broadcast is a clear example of disinformation pertaining to the COVID-19 pandemic. In this regard, it should be noted that disinformation relates to verifiably false or misleading information created, presented and disseminated for economic gain or to intentionally deceive the public.¹ The Merriam-Webster Dictionary defines disinformation as “false information deliberately and often covertly spread (as by the planting of rumours) in order to influence public opinion or obscure the truth”. Similarly, the Cambridge Dictionary defines it as “false information spread in order to deceive people”, and the Oxford Learner’s Dictionary defines it as “false information that is given deliberately”.
9. A more nuanced definition is provided by the European Commission High-Level Expert Group on Fake News and Online Disinformation, which defines disinformation as “all forms of false, inaccurate or misleading information designed, presented and promoted to intentionally cause public harm or profit”.²
10. Disinformation may have far-reaching consequences, cause public harm, be a threat to democratic political and policy-making processes, and may even put the protection of the public’s health, security and environment at risk. Disinformation erodes trust in institutions, as well as in the media, and harms democracy by hampering the ability of the public to take informed decisions. It can polarise debates, create or deepen tensions in society, undermine electoral processes, and impair freedom of opinion and expression. As explained in the Joint Declaration on Freedom of Expression and ‘Fake News’, Disinformation and Propaganda:³

¹ European Commission, ‘Tackling online disinformation’, accessible at <https://ec.europa.eu/digital-single-market/en/tackling-online-disinformation>.

² European Commission, ‘A multi-dimensional approach to disinformation: Report of the independent High-level Group on fake news and online disinformation’ (2018) at p 3.

³ (2017). This is published by the Special Rapporteur on Freedom of Opinion and Expression of the United Nations, the Representative on Freedom of the Media of the Organisation for Security and Co-operation in Europe, the Special Rapporteur on Freedom of Expression of the Organisation of American States, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights.

“[D]isinformation and propaganda are often designed and implemented so as to mislead a population, as well as to interfere with the public’s right to know and the right of individuals to seek and receive, as well as to impart, information and ideas of all kinds, regardless of frontiers, protected under international legal guarantees of the rights to freedom of expression and to hold opinions.”

11. According to the World Health Organisation (“WHO”), disinformation about the COVID-19 pandemic is of particular concern, as it affects whether people will do the right thing to control the disease or to mitigate its impact.⁴ Disinformation relating to the COVID-19 pandemic is of such significant concern that it has been criminalised in terms of the regulations issued under section 27(2) of the Disaster Management Act 57 of 2002, as published on 18 March 2020. Notably, regulation 11(5) provides that:

“Any person who publishes any statement, through any medium, including social media, with the intention to deceive another person about –
(a) COVID-19;
(b) COVID-19 infection status of any person; or
(c) any measure taken by the Government to address COVID-19,
commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding six months, or both such fine and imprisonment.”

12. In sum, therefore, MMA submits that the broadcast was harmful for at least three key reasons: (i) first, the broadcast intentionally disseminated disinformation based on facts that were untrue; (ii) second, the broadcast promoted unlawful conduct that was in violation of the regulations issued under the Disaster Management Act; and (iii) third, by denying the existence of COVID-19 and claiming it to be a scam, the consequence of the broadcast may result in people not following appropriate precautionary and health measures in line with the advice of the relevant authorities.

GROUNDS OF COMPLAINT

First ground of complaint: Comment must be based on facts that are true

13. Clause 28.2.2 of the Subscription Broadcast Code of Conduct and clause 12.2 of the Free to Air Code of Conduct both require that “[c]omment must be an honest expression of opinion and must be presented in such a manner that it appears clearly to be comment, **and must be made on facts truly stated or fairly indicated and referred to**”. (Emphasis added.) Importantly, while licensees are entitled to broadcast comment, such comment must be based on facts that are true and justifiable.

⁴ World Economic Forum, ‘How experts are fighting the Coronavirus ‘infodemic’ (5 March 2020), accessible at <https://www.weforum.org/agenda/2020/03/how-experts-are-fighting-the-coronavirus-infodemic/>.

14. In the present matter, the broadcast was rife with falsehoods and untruths. This included the following:
- a. Mr Icke called COVID-19 “a pandemic hoax”, and claimed to have “absolute factual evidence to support that”. However, no such evidence was provided.
 - b. Mr Icke stated that “we have this quite obvious scam going on in terms of communication of information”.
 - c. Mr Icke stated that the WHO “was created by people like the Rockefeller family to control global health policy from a central point”, and that the WHO was “fronted up by a guy called Tedros, the DG, who is just an asset of Bill Gates, who owns the WHO”.
 - d. Mr Icke stated that “I was banned after doing a live interview stream on Youtube which got phenomenal audience because I said one thing, and this is what they are terrified of people realising: there is no virus.”
 - e. Mr Icke stated that “there is not a scientific paper on planet earth that has isolated the virus they call SARS-CoV-2 or COVID-19, they’ve never isolated it to show it exists”.
 - f. Mr Icke stated that “the information has come from doctors, virologists and medical specialists who will never get on a mainstream program because they’ve sussed there is no virus”.
15. At the crux of the interview with Mr Icke was the assertion that COVID-19 does not exist, and that the concerns regarding the pandemic are a scam. This is patently untrue. COVID-19 was declared as a global pandemic on 11 March 2020. Around the world, international organisations, states, leading medical experts and other relevant stakeholders have confirmed the existence of COVID-19. At present, there are more than 20 million people globally who have had confirmed infections of COVID-19, and more than 700 000 people who have died as a result of the disease.⁵ While co-morbidities may present an additional risk to affected persons, this does not negate the existence or direct impact that COVID-19 has had on the health and lifespan of millions of people around the world.
16. Further to this, and contrary to the assertion made by Mr Icke, a collaborative effort between the University of the Western Cape and Stellenbosch University obtained the first-known laboratory isolate of COVID-19 in South Africa on 1 April 2020.⁶ This has also been done in other countries, such as Canada for example, where a Canadian team of researchers from Sunnybrook Research Institute, McMaster University and Toronto University successfully

⁵ Worldometer, ‘COVID-19’ (10 August 2020), accessible at <https://www.worldometers.info/coronavirus/>.

⁶ News Medical, ‘South Africa obtains first laboratory isolate of SARS-CoV-2’ (11 May 2020), accessible at <https://www.news-medical.net/news/20200511/South-Africa-obtains-first-laboratory-isolate-of-SARS-CoV-2.aspx#>.

isolated a strain of COVID-19 from two specimens and then cultivated it in a secure containment facility.⁷

17. Furthermore, the broadcast sought to discredit the WHO, which is one of the primary organisations that has been relied upon in the development of strategies to address COVID-19. Again, the facts contained in the broadcast were untrue. The funding of the WHO is made transparently known, and is received from member states paying their assessed contributions, in addition to voluntary contributions from member states and other partners.⁸ As a specialised agency of the United Nations, the WHO is independent from any state or private sector actor, and therefore is not – and cannot – be owned by Bill Gates, as claimed in the broadcast.
18. MMA submits that the denial of the existence of COVID-19 is both harmful and dangerous. There is insurmountable evidence that COVID-19 does indeed exist, and the statements made throughout the broadcast fail to meet the requirement of being based on facts that are true. This may result in viewers who believe the contents of the broadcast deciding not to take the necessary health and safety measures, and thereby endangering themselves and the broader public. In the midst of a public health crisis, it is particularly important that even commentary must be justified on true facts. This is for good reason, as the failure to do so would permit patent lies and falsehoods to be peddled in a manner that skews the public discourse and undermines public safety responses.
19. Accordingly, MMA submits that the broadcast was in breach of clause 28.2.2 of the Subscription Broadcast Code of Conduct and clause 12.2 of the Free to Air Code of Conduct.

Second ground of complaint: Duty to present opposing points of view

20. Clause 28.3.1 of the Subscription Broadcast Code of Conduct and clause 13.1 of the Free to Air Code of Conduct provide as follows:

“In presenting a programme in which a controversial issue of public importance is discussed, **a broadcaster must make reasonable efforts to fairly present opposing points of view** either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a

⁷ Independent, ‘Coronavirus: Scientists isolate virus responsible for deadly COVID-19 outbreak’ (13 March 2020), accessible at <https://www.independent.co.uk/news/science/coronavirus-covid-19-virus-isolate-canada-scientists-mutations-strains-a9399226.html>. See, also, The Conversation, ‘I study viruses: How our team isolated the new coronavirus to fight the global pandemic’ (25 March 2020), accessible at <https://theconversation.com/i-study-viruses-how-our-team-isolated-the-new-coronavirus-to-fight-the-global-pandemic-133675>.

⁸ WHO, ‘How WHO is funded’, accessible at <https://www.who.int/about/planning-finance-and-accountability/how-who-is-funded>.

reasonable period of time of the original broadcast and within substantially the same time slot.” (Emphasis added.)

21. MMA submits that the broadcast was self-styled as one being controversial, but failed to effectively present opposing views. The segment with Mr Icke did not include any other guests, which might have included a medical expert who could meaningfully counter Mr Icke’s denial of the existence of COVID-19. The host also did not effectively counter Mr Icke’s denial, and acknowledged that he was neither a doctor nor a researcher on the subject. Moreover, the host also ended the broadcast by expressing his confusion, stating that “I hope you’re as confused as I am”.
22. As a consequence of this failure, Mr Icke was permitted to make his false claims unchecked, without any countervailing discussion or correction. Accordingly, MMA submits that the broadcast was in breach of clause 28.3.1 of the Subscription Broadcast Code of Conduct and clause 13.1 of the Free to Air Code of Conduct.

Third ground of complaint: Protection of child viewers

23. Clause 13 of the Subscription Broadcast Code of Conduct provides that “[a] television or composite subscription broadcasting service licensee, wherever practicable, must attempt to ensure that **the more the broadcasting of programming material is unsuitable for children, the later that programming material must be broadcast** after the commencement of the watershed period.” (Emphasis added.)
24. In the present matter, the broadcast on eNCA took place a mere 30 minutes into the watershed period. The interview also remains accessible on eNCA’s website to be viewed at any time. This poses a significant risk of children viewing the broadcast to their detriment. Given the evolving maturities of children, and in the midst of the current public health crisis, it is important to ensure that children are appropriately protected against false information about the COVID-19 pandemic that may confuse or disturb their understanding thereof. Accordingly, MMA submits that the broadcast was in breach of clause 13 of the Subscription Broadcast Code of Conduct.

APPROPRIATE SANCTION

25. MMA submits that the broadcast was reckless and irresponsible in its dissemination of disinformation. eNCA and eTV have shown no concern for the harm that the broadcast has the potential to cause, as it has both re-broadcast the interview and maintained a copy on eNCA’s website. MMA submits that it is impermissible for disinformation of this nature to be broadcast – particularly on a news channel – and submits that the BCCSA should issue an appropriate sanction.

26. This may include, for instance, a reprimand; an order to broadcast a correction or summary of the finding; and/or a fine of up to R80 000.

CONCLUDING REMARKS

27. MMA has been deeply concerned by the broadcast, and notes that complaints regarding the broadcast have been received on the Real411 platform. MMA therefore urges the BCCSA to address the key issue of the dissemination of disinformation as a matter of urgency, as such content is deeply detrimental to the public interest.
28. Please do not hesitate to contact us if we can provide any further information.